



A-475-818

Changed Circumstances Review

Public Document

AD/CVD III: JZ

DATE: June 1, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

RE: Certain Pasta from Italy

SUBJECT: Final Results of Changed Circumstances Review (CCR) of Tamma

I. Summary

Based on our analysis of comments which we received in the case and rebuttal briefs submitted by interested parties in the above-referenced CCR, we recommend that you approve the positions described in the “Discussion of Interested Party Comments” section of this memorandum, and continue to find that Francesco Tamma S.p.A. (Tamma) is not the successor-in-interest to Tamma Industrie Alimentare Capitanata S.r.l. (TIAC), the company in the Delverde/TIAC entity, which was excluded from the *Pasta Order*.¹

II. Background

On March 21, 2017, the Department of Commerce (the Department) issued the *Preliminary Results* of this CCR, in which it determined that Tamma is not the successor-in-interest to TIAC, the company in the Delverde/TIAC entity, which was excluded from the *Pasta Order*.²

On March 31, 2017, Tamma submitted comments regarding the *Preliminary Results*.³ On April 17, 2017, the petitioners submitted their rebuttal brief.⁴

¹ See *Notice of Amendment of Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision and Revocation in Part: Certain Pasta from Italy*, 66 FR 65889 (December 21, 2001) (*Pasta Order*).

² See *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 82 FR 14501 (March 21, 2017) (*Preliminary CCR Results*), and the accompanying Memorandum entitled, “Preliminary Results of Changed Circumstances Review Regarding Successor-In-Interest Analysis: Certain Pasta from Italy” (Preliminary CCR Memorandum).

³ See Tamma’s Case Brief, entitled “Certain Pasta from Italy: Changed Circumstances Review Case Brief of Francesco Tamma S.p.A.,” dated March 31, 2017 (Tamma Case Brief).

⁴ The petitioners are American Italian Pasta Company, Dakota Growers Pasta Company, and New World Pasta Company. See Petitioners’ Rebuttal Brief, entitled “Certain Pasta from Italy: Petitioners’ Rebuttal Brief for Francesco Tamma S.p.A.,” dated April 17, 2017 (Petitioners Rebuttal Brief).

III. Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by the scope of the order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the order.⁵ Pursuant to the Department's August 14, 2009, changed circumstances review, effective July 1, 2008, gluten free pasta is also excluded from the scope of the order.⁶ Effective January 1, 2012, ravioli and tortellini filled with cheese and/or vegetables are also excluded from the scope of the order.⁷

Also excluded are imports of organic pasta from Italy that are certified by an EU authorized body in accordance with the United States Department of Agriculture's National Organic Program for organic products. The organic pasta certification must be retained by exporters and importers and made available to U.S. Customs and Border Protection or the Department of Commerce upon request.

The merchandise subject to this order is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

IV. Discussion of Interested Party Comments

Comment: Whether a Successor-in-Interest CCR Analysis Should Be Based on an Event/Events or on the Totality of the Circumstances on the Record

Tamma's Brief

- The Department improperly compared the company as it was in 2001 to the company as it currently operates in 2016. The Department's framework for conducting its successor-in-interest analysis for the *Preliminary Results* is fundamentally flawed, and not in accordance with its past practice, because the analysis does not distinguish between significant changes

⁵ See Memorandum to Richard Moreland, dated August 25, 1997, which is on file in the Central Records Unit.

⁶ See *Certain Pasta From Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part*, 74 FR 41120 (August 14, 2009).

⁷ See *Certain Pasta From Italy: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews and Revocation, in Part*, 79 FR 58319, 58320 (September 29, 2014).

to a company due to identifiable “event or events,” as opposed to incremental changes that occurred naturally over time.⁸

- The Department’s normal successor-in-interest analysis focuses on the “before” and “after” an event (typically including a change in name) which may or may not have yielded a significant change in structure. This analytical framework of focusing on an event has been followed by several CCR cases, *e.g.*, *Multilayered Wood Flooring CCR*, *Crystalline Silicon Photovoltaic Cells CCR*, *Frozen Warmwater Shrimp from India CCR*, *Certain Pasta from Italy CCR*, and *TRBs from China CCR*.⁹
- It is inappropriate for the Department to conduct a successor-in-interest analysis that compares periods that are 15 years apart, during which time multiple events have occurred. Instead, the Department should focus on three “trigger” events to differentiate between incremental changes occurring in the ordinary course of business and rapid changes that may impact the successor-in-interest analysis. These events are: 1) the Del Verde bankruptcy, ending on April 19, 2004; 2) the acquisition of Tamma’s stock by Satel on June 23, 2015; and 3) the name change from TIAC to Francesco Tamma S.p.A. on July 27, 2016. None of these events engendered significant changes to the company, with respect to ownership/management/corporate structure, production facilities, suppliers and customers.¹⁰
- Based on information on the record, the Department should find that Francesco Tamma S.p.A. is the successor-in-interest to TIAC.¹¹

The Petitioners’ Rebuttal Comments

- The Department’s analysis is in accordance with past practice and, in fact, did focus on significant changes due to identifiable events, resulting in a clear finding of no successorship, and that Tamma is a materially dissimilar entity to the company that was excluded from the order.
- Tamma is participating in this CCR because it wants to retain the exclusion granted in 2001 to the combined entity, Delverde/TIAC. The fundamental flaw in Tamma’s argument is that it wants to retain the exclusion (*i.e.*, zero cash deposit rate) granted specifically to the combined entity, Delverde/TIAC, but at the same time, argues that the proper predecessor company is TIAC, not Delverde/TIAC. This position is not supported by the law, because the cash deposit rate of the predecessor company that Tamma seeks is the cash deposit rate for the Delverde/TIAC entity. Since the Department did not publish separate antidumping

⁸ See Tamma Case Brief at 1-2.

⁹ *Id.*, at 3-5, citing *Multilayered Wood Flooring from the People's Republic of China: Preliminary Decision Memorandum of Antidumping and Countervailing Duty Changed Circumstances Reviews*, February 1, 2017 (*Wood Flooring CCR*); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Changed Circumstances Review*, 81 FR 91909 (December 19, 2016) (*Crystalline Silicon Photovoltaic Cells CCR*); *Certain Frozen Warmwater Shrimp From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 81 FR 90774 (December 15, 2016) (*Frozen Warmwater Shrimp from India CCR*); *Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 80 FR 65985 (October 28, 2015) (*Certain Pasta from Italy CCR*), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 80 FR 19070 (April 9, 2015) (*TRBs from China CCR*) and accompanying Issues and Decision Memorandum (*TRBs from China CCR IDM*).

¹⁰ See Tamma Case Brief at 5.

¹¹ *Id.*, at 15.

duty rates for Delverde and TIAC, Tamma cannot claim to be the successor to TIAC only, and, therefore, eligible for the zero cash deposit rate.¹²

- While it is true that the Department does look at “events” as part of its successor-in-interest analysis, it does not do so exclusively or at the expense of the “totality of the circumstances.” The cases Tamma cites are distinguishable from the current CCR, where they do not support Tamma’s assertion that the Department’s analysis is flawed. Instead, they fully support the *Preliminary CCR Results*, which were based on changes that were a direct and immediate result of a corporate share transfer and Delverde’s subsequent bankruptcy.¹³
- In the *Preliminary CCR Results*, the Department examined all significant events that occurred during the period from 2001 through July 2016, including the sale of shares to Abruzzo. The first significant change occurred in 2004, when TIAC severed its ties with Delverde. The majority of Delverde’s shares were transferred to Abruzzo Alimenti S.r.l., of which TIAC became a direct shareholder with the Tamma family members becoming indirect shareholders.¹⁴
- The 2004 Abruzzo stock transfer, an event that is omitted by Tamma, is the event that caused the significant changes to Tamma’s ownership and management structure, production operations, supplier relationships and customer base, rendering Tamma and TIAC materially dissimilar. Accordingly, the Department should continue to find that Tamma is not the successor-in-interest to the Delverde/TIAC antidumping duty exclusion, and should assess antidumping duties of 15.45 percent on all entries by Tamma.¹⁵

Department’s Position: We disagree with Tamma that we improperly compared the company as it was in 2001 to the company as it currently operates. This CCR is about the change to the entity that was excluded from the *Pasta Order* in 2001. The company that was excluded from the *Pasta Order* was the collapsed entity of Delverde/TIAC.¹⁶ In *Delverde CCR*, we found that Delverde Industrie Alimentari S.p.A. (Delverde S.p.A.) was not the successor-in-interest to Delverde S.r.l (Delverde) based on aspects of the bankruptcy of Delverde, changes in management, production facilities, supplier relationships and customer base.¹⁷ We found that Delverde S.p.A. was not entitled to the exclusion from the *Pasta Order* that was originally granted to Delverde, a defunct entity.¹⁸ Based on the petitioners’ request, we initiated this CCR with respect to Tamma, which was part of the collapsed entity in 2001.¹⁹ In other words, the

¹² See Petitioners Rebuttal Brief at 3-4.

¹³ *Id.*, at 17-20.

¹⁴ *Id.*, at 22.

¹⁵ *Id.*, at 19-29.

¹⁶ See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Pasta From Italy*, 61 FR 1344 (January 19, 1996) (*Pasta LTFV Preliminary Determination*).

¹⁷ See *Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 79 FR 28481 (May 16, 2014) and accompanying Preliminary Successor-in-Interest Determination Memorandum (Delverde Preliminary CCR Memorandum); *unchanged in Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 79 FR 76339 (September 19, 2014) (*Delverde CCR*) and accompanying Issues and Decision Memorandum (IDM).

¹⁸ *Id.*

¹⁹ See *Certain Pasta from Italy: Initiation of Changed Circumstances Review*, 81 FR 62864 (September 13, 2016) (*Initiation Notice*).

question before the Department is whether the “new” company (Francesco Tamma) should also be accorded exclusion status.²⁰

We agree with Tamma that there are key events in the interval between 2001 to 2016 that should be examined in the successor-in-interest analysis, which are the Delverde bankruptcy, the acquisition of Tamma’s stock by Satel, and the name change from TIAC to Francesco Tamma S.p.A. We examined all of these events in the *Preliminary CCR Results* and their impact on the company’s management, production facilities, suppliers and customers, and found that Tamma is materially dissimilar to the original TIAC, the company in the Delverde/TIAC entity.²¹ We disagree with Tamma’s argument that the changes between 2001 and 2005 post-Delverde bankruptcy were changes in the company’s normal course of business and had nothing to do with the Delverde bankruptcy. To be clear, while we considered the totality of circumstances, our findings and conclusions do not rest on the company’s changes that are minor, incremental and routine. We believe it is important to conduct our analysis within the proper framework. In *TRBs from China CCR*, in answering the question whether the “new” company was entitled to the predecessor’s cash deposit rate, the Department began with the respondent “as it existed at the time of revocation, because this company is the entity that was revoked from the AD order.”²² Consistent with the Department’s practice, the starting point of this instant successor-in-interest should be the original respondent, *i.e.*, the collapsed entity Delverde/TIAC, because that is the entity that was excluded from the *Pasta Order*. The exclusion granted in the original investigation was premised on the “close, intertwined nature” of the two pasta manufacturers, as the Department states:

The administrative record establishes a close, intertwined relationship between Delverde and {TIAC}. At verification of Delverde and {TIAC}, we confirmed reported information concerning ownership, boards of directors, transactions, and production processes. This information demonstrates that these affiliated producers have similar production processes and exhibit a significant potential for price manipulation as evidenced by interlocking boards of directors and shared transactions. Based on the information on the record, we believe that Delverde and {TIAC} cannot be considered separate manufacturers under the antidumping law, and that it is appropriate to calculate a single, weighted-average margin for these companies.²³

Accordingly, the successor-in-interest analysis of Tamma should not be analyzed in isolation from Delverde because the exclusion was granted to the consolidated entity “Delverde/TIAC.”²⁴ With respect to the Delverde bankruptcy, Tamma’s analysis does not consider the entity that was excluded from this antidumping duty order at the time of the exclusion, but, instead, focused on the later date of April 19, 2004, and used this date as the dividing line for its “before and after” Delverde bankruptcy analysis. We disagree with this artificial line of demarcation. The relevant question is whether the current entity is the successor-in-interest to the entity that was excluded

²⁰ See *Delverde CCR*.

²¹ See *Preliminary CCR Memorandum*.

²² See *TRBS from China CCR* IDM at 6.

²³ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy*, 61 FR at 30352 (*LTFV Final Determination*).

²⁴ We use the acronym TIAC for Tamma in the original investigation to distinguish with the current shortened citation of Tamma.

from the *Pasta Order*, as it existed at the time of the exclusion. Accordingly, the company's state at the time of the exclusion is the starting point for our analysis. Moreover, with respect to the subsequent bankruptcy events, we cannot overlook the fact that the bankruptcy proceedings took place over several years, and that the April 19, 2004, date was just the official recording of the event.²⁵ TIAC underwent significant corporate restructuring in 2004, prior to the Delverde bankruptcy, as we state in the Preliminary CCR Memorandum:

The first significant change occurred in 2004, when TIAC severed its ties with Delverde, and the majority of the shares of Delverde were transferred to a company named Abruzzo Alimenti S.r.l., of which TIAC became a direct shareholder, with the Tamma family members becoming indirect shareholders. The "Delverde/TIAC" entity ceased to exist with Delverde's bankruptcy in February 2005.²⁶

The Department detailed other changes with respect to ownership, management, production facilities, suppliers and customers in the Preliminary CCR Memorandum.²⁷ Record evidence shows that there were intertwined operations between Delverde and TIAC before the Abruzzo stock transfer and Delverde's bankruptcy. The Tamma family was a shareholder of Delverde, and Francesco Tamma was the Chairman of both TIAC and Delverde at the same time.²⁸ TIAC was the sole supplier of bulk semolina, semolina and remilled semolina in certain packages to Delverde. TIAC also sold pasta to Delverde that it produced at its plant of Cerignola.²⁹

Prior to the Delverde bankruptcy, TIAC shut down the Cerignola plant in March 2004 and started its pasta operation in Foggia, Italy. In addition, TIAC stopped its semolina production after 2004.³⁰ Moreover, the Tamma family's shareholding of TIAC changed from over 74 percent in 2001 to only 20 percent of the current Tamma due to the acquisition of Tamma's stock by Satel.³¹ We also determined in the *Preliminary CCR Results* that Tamma did not demonstrate that its operations, with respect to the subject merchandise, were materially similar to the operations of TIAC when it comes to supplier relationships and customer base.³²

We disagree with Tamma that our successor-in-interest analysis methodology is inconsistent with the Department's practice. In all of the cases cited by Tamma, the Department analyzes the totality of the evidence on the record and determines whether the "new" company is entitled to the predecessor's cash deposit rate. As the Department explained in *TRBs from China CCR*:

As noted, the Department's practice is to consider the totality of the circumstances on the record when evaluating a successor-in-interest claim. We determined that it was appropriate to conduct a bifurcated analysis in this case, and this determination is consistent with Departmental precedent. For example, in *Orange Juice from Brazil I*,

²⁵ See *Delverde Preliminary CCR Memorandum* at 2-3.

²⁶ See "Certain Pasta from Italy: Changed Circumstances Review Response of Francesco Tamma S.p.A.," dated October 12, 2016, at 18-26 (Tamma October 12, 2016, CCR Response) at 28-29.

²⁷ See Preliminary CCR Memorandum at 3-5.

²⁸ See "Tamma October 12, 2016, CCR Response at 28. See also Preliminary CCR Memorandum at 3.

²⁹ See "Tamma October 12, 2016, CCR Response at 29-30.

³⁰ *Id.*, at 3-5.

³¹ *Id.*, at 18 and 22.

³² See Preliminary CCR Memorandum at 4-5.

the Department conducted a successor-in-interest analysis involving a company revoked from a previous AD order on Brazilian orange juice; in that case, the Department explicitly stated that the question before it was whether the “new” company, Coinbra-Frutesp, was the successor-in-interest to the predecessor company “as it existed at the time of revocation.”³³

Consistent with our practice,³⁴ the Department has considered the totality of the information on the record of this changed circumstances review and considered whether the new company, Tamma, is a successor-in-interest to the excluded entity, Delverde/TIAC, as it existed at the time of exclusion. We continue to find that Tamma is not the successor-in-interest to Deleverde/TIAC entity based on the totality of the circumstances, including aspects of the bankruptcy of Delverde, changes in management, changes in production facilities, and changes in supplier relationships and customers.

V. Recommendation

Based on our analysis of the comments received, we recommend continue to find that Tamma is not the successor-in-interest to TIAC, the company in the Delverde/TIAC entity, which was excluded from *the Pasta Order*.



Agree



Disagree

6/1/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN
Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

³³ See *TRBs from China CCR IDM* at 8, citing *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil*, 71 FR 2183 (January 13, 2006) (*Orange Juice from Brazil I*) and accompanying Decision Memorandum at Comment 3.

³⁴ See, e.g., *Diamond Sawblades and Parts Thereof From the People’s Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstances Review*, 76 FR 64898 (October 19, 2011) and accompanying Issues and Decision Memorandum at Comment IIC.